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SUPREME COURT FOR THE STATE OF MICHIGAN

No. 43750

ROBERT W. MORRIS,
Plaintiff and Appellant,

vs.

FORD MOTOR COMPANY,
Defendant and Appellee

STATEMENT IN SUPPORT OF JURISDICTION

The plaintiff-appellant and petitioner, Robert W. Morris, in support of the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully shows:

A

Statutory Provisions Sustaining Jurisdiction

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Section 344(a) of Title 28 of the United States Code, reading, to the extent relevant here, as follows:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is

against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal."

B

Statutes of the State the Validity of Which Is Involved

The statute of the State of Michigan, the validity of which has been sustained by final judgment of the Supreme Court of the State of Michigan, the highest Court of said State, as not being violative of or repugnant to the Constitution of the United States is known as the Michigan Workmen's Compensation Act, 2 Michigan Compiled Laws, 1929, 8407, et seq., as amended by Act No. 245, Public Acts of 1943.

This Act relates to the liability of employers for injuries or death sustained by their employees, and, except for certain cases not pertinent herein, make subject to its provision all employers and all employees. Neither party may elect to remain outside the purview of the Act.

Section 4 of Part I of the Act (Michigan Compiled Laws, § 8410) provides:

> "Where the conditions of liability under this act exist, the right to the recovery of compensation benefits, as herein provided, shall be the exclusive remedy against the employer."

The pertinent portion of Section 1 of Part II (Michigan Compiled Laws 1929, § 8417) is

> "An employe, who receives a personal injury arising out of and in the course of his employment by an employer who is at the time of such injury subject to the provisions of this act, shall be paid compensation in the manner and to the extent hereinafter provided, or in

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case of his death resulting from such injuries such compensation shall be paid to his dependents as hereinafter defined."

Section 1 of Part VI (Michigan Compiled Laws 1929, § 8478) provides:

> "If the employe or his dependents, in case of his death, of any employer subject to the provisions of this act files any claim with, or accepts any payment from such employer, or any insurance company carrying such risks, or from the commissioner of insurance on account of personal injury, or makes any agreement, or submits any question to arbitration under this act, such action shall constitute a release to such employer of all claims or demands at law, if any, arising from such injury."

The entire Act as interpreted by the Michigan Supreme Court, and especially the foregoing sections, are believed to conflict with Section 1 of the Fourteenth Amendment of the United States Constitution.

C

Date of the Judgment Sought to Be Reviewed and the Date Upon Which the Application for Appeal Is Presented

The date of the judgment of the Supreme Court of the State of Michigan which is now sought to be reviewed is February 17, 1948. Appellant's Motion for a Rehearing was denied on April 5, 1948. The time for taking an appeal, three months from the date of final decision (Tit. 28, § 350 U. S. C.) began to run on the date of the denial of said Motion for Rehearing, to-wit, April 5, 1948. *Aspen Mining and Smelting Company* v. *Billings,* 150 U. S. 31.

D

Statement Showing That the Nature of the Case and of the Rulings of the Court Was Such as to Bring the Case within the Jurisdictional Provision Relied Upon

The plaintiff, Robert W. Morris, was employed as a radio mechanic for the defendant, Ford Motor Company. On December 19, 1945, about 9:30 o'clock of that morning, he noticed a bloating and a sour condition of the stomach, and he went to the first aid where he was given some soda and epsom salts. He began to suffer cramps and was taken home about 1:00 o'clock. He was treated by a physician, and on December 27th was taken to a hospital where he was operated on December 28th. He returned to work January 30th at a sitting-down job. He worked off and on, the side continued to pain, and on March 15th he underwent an appendectomy which he claimed was caused by the wrongful dosing of salts.

On July 9, 1945, the plaintiff filed claim for workmen's compensation benefits alleging that he suffered an injury arising out of and in the course of his employment with the Ford Motor Company because of the wrongful administration of the salts to him by the defendant's first aid department. The Ford Motor Company refused to accept liability therein, denying that said injury arose out of and in the course of his employment.

On October 7, 1946, while the plaintiff's claim for workmen's compensation benefits was pending before the Compensation Commission on review, the Michigan Supreme Court decided the case of *Stables* v. *General Motors Corporation*, 315 Mich. 654. Thereafter, on October 22, 1947, the Compensation Commission issued its opinion and order

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denying the plaintiff's claim for compensation on the following ground:

> "We have carefully reviewed this record and it is our opinion that the plaintiff *did not sustain a personal injury arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act. Stables v. General Motors Corporation,* June Term, 1946. The award of the Deputy Commissioner is affirmed." (Our italics.)

On December 18, 1946, the plaintiff filed the instant proceedings in the Circuit Court for the County of Wayne, Michigan, against the defendant Ford Motor Company, alleging in his declaration, in part, that the defendant wrongfully breached its duties to the plaintiff in administering salts to him when he complained of a stomach ache and that the administration of salts for a stomach ache was dangerous and not in accordance with sound and common medical practice. He requested that the court assess damages against the defendant for injuries sustained by him because of the defendant's breach of duty and wrongful act toward him.

On January 14, 1947, the defendant moved to dismiss the plaintiff's proceedings and quash the declaration. Plaintiff filed no answer but the trial judge heard informal, oral argument. On January 29, 1947, the Trial Court entered its opinion, stating in part:

> "The Court: The situation here evidently is either very complicated itself, or has been made so by the decisions. I am bound by a majority decision of our Supreme Court, even though I do not agree with them, and I certainly do not agree with them if their decision in the Twork vs. Munising Paper Company, 275 Michigan 174, means to hold that because of the language used in section 17.212.

'If the employee, or his dependents, in the case of his death, of any employer subject to the provisions of this act files any claim with, or accepts any payment from such employer,' etc.

I say, if the majority opinion in this Twork case holds that because of that language, an employee files a claim with the Commission, whether it comes within the act or not, or whether it is compensable or not, if he just files a claim, no matter for what reason, he cannot recover under this act, he still cannot sue in court.

I say, I do not believe in that. That is not right; that is not justice, and I do not believe that it requires an amendment or act of the legislature in order to make it the way it should be.

Everybody who has ever written upon the subject to any of these decisions seems to agree that if a man is injured and he cannot receive compensation because the case does not come within the terms of the act, he should be permitted to sue in court. That is, everyone seems to agree that he should have a right of action, and that it should not come within those cases of injury without any action.

The language used by Justice Potter upon these main questions certainly appeals to me. I believe it is correct, logical, and sound.

He says on page 196:

'I can find nothing in the workmen's compensation act which takes away any common-law right. The remedy provided thereby is clearly exclusive when the act so provides, that is, when compensation 'is recoverable under this act.' 2 Comp. Laws 1929, sec. 8410. The act has no effect upon cases not arising under the act, • • •

'And no such absurd provision is found in the workmen's compensation act. The statute purports to cover only those cases where compensation 'is recoverable under this act.' It confers no jurisdiction, power or authority over those cases where compensation is not recoverable under the act.'

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The election of remedy cases do not apply, or at least should not apply. There cannot be an election of remedies unless there are two remedies. If this case does not come within the compensation statute, then when petition was filed there it was not an election of remedies, but a mistake in remedy. If the Compensation Commission has no jurisdiction over this case, because under the facts and circumstances of the case it does not come within the compensation law, I am unable to see how that can affect his right to go into court, which is the only place he can go. To deny him this right is to deny him any remedy at all.

* * * * * * *

I believe, however, that this motion must be granted for a different reason, and that it comes squarely within a couple of cases, and if I am correct in that, then the motion to dismiss must be granted, not because of any of these other questions which seem to be complicated and more or less confusing, but must be granted because under the facts of this case, as stated in the declaration and as argued by counsel for plaintiff and for defendant, the relationship of master and servant, or employer and employee, was not terminated at the time. It existed, and the accident, if it is an accident, or injury, if it is an injury, occurred on the premises of the employer while he was still actively engaged in his work. That is, here in this case he was working there, had a pain which kept getting more severe, and finally he went to see about it, and he went to the First Aid Station, which was maintained on the premises for the convenience of the employees and for their mutual benefit, that is, the mutual benefit of the employer and the employee, and he goes there to get something for his pain and there salts are given him. Outside of the question whether that was what caused the later developments or not, and outside of the question whether or not there should be any liability for any result that followed on the part of the employer, I am satisfied now that this is a compensation case, that he was in the

employ, that this thing did happen while the relationship existed, and that it is especially controlled by two decisions, Haller versus City of Lansing, 195 Michigan 753, and Amicucci versus Ford Motor Company, 308 Michigan 151.

* * * * * * *

This man had a pain while he was at work and on the premises, and he goes to the first aid station and these salts were given to him to relieve the condition at that time and for the mutual benefit of both parties; and it seems to me, as I say, that from these facts in the case at bar, that clearly under these decisions this act was in the course of the employment and grew out of the employment and that the relationship of employer and employee was in existence at the time, and if there is any liability, it must be under compensation.

The motion is, therefore, granted."

On January 30, 1947, an order dismissing the case was entered in accordance with this opinion.

Plaintiff appealed to the Michigan Supreme Court and in his Reasons and Grounds for Appeal contended that the Trial Court erred in ruling as a matter of law that his injury arose out of and in the course of his employment and that compensation should have been granted for this injury. It was urged that the Court erred since that finding was *res judicata* and conclusive upon the parties. Since the opinion of the Trial Court in regard to the existence of a remedy for every wrong coincided with plaintiff's contention, no constitutional question was raised.

The issue which was specifically rejected by the Trial Court was raised by the defendant in its answer brief on appeal. The defendant followed this procedure, even though it had not cross-appealed from the Trial Court's

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opinion and judgment and even though the issues it raised were not assigned as errors on appeal to the Michigan Supreme Court.

In his reply brief, plaintiff immediately called to the attention of the Michigan Supreme Court that "Any deprivation of the plaintiff's right at law would be unconstitutional." The argument following contended that any limitation upon plaintiff's right to proceed at law in the instant case would deprive him of his rights under the Fourteenth Amendment to the United States Constitution.

In its opinion (copy attached hereto) the Michigan Supreme Court affirmed the judgment of the Trial Court, but not on the same grounds. The Court held that in accordance with 2 Mich. Comp. Laws 1929, § 8410, as amended by Act No. 245 of the Public Acts of 1943 (Mich. Stat. Ann. 17.144), sole jurisdiction of plaintiff's claim was vested in the Compensation Commission and that plaintiff had no right of action at common law, irrespective of whether or not his claim was compensable.

The Court further held that plaintiff was barred from suing at common law because he had filed a claim with the Compensation Commission citing 2 Mich. Comp. Laws 1929, § 8478 (Mich. Stat. Ann. 17.212).

Compensation laws are valid only where they provide a reasonable substitute for the common law remedies which they destroy. (See *New York Central R. R. Co.* v. *White*, 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667; *Truax* v. *Corrigan*, 257 U. S. 312, 42 S. Ct. 124, 66 L. Ed. 254.) Therefore, the Michigan Workmen's Compensation Act, as interpreted by the Michigan Supreme Court in the instant case is unconstitutional since it has deprived plaintiff of his common law remedy, and offers no substitute, leaving him without remedy.

The opinion of the Michigan Supreme Court completely ignored the plaintiff's contention, contained in his reply brief, that the interpretation thus placed on the Workmen's Compensation Act was unconstitutional. Consequently, an application for rehearing was filed which limited itself entirely to the constitutional proposition.

The application, in its entirety, follows:

"Now comes Robert W. Morris, plaintiff and appellant herein, by Maurice Sugar, Morton A. Eden and Benjamin Marcus, his attorneys, and moves this Honorable Court to grant a rehearing and reargument in the above entitled cause and for oral argument on this application for the following reasons:

1. The provisions of Act No. 10 Public Acts of 1912, First Extra Session as amended, as construed by the court in its decision herein deprive plaintiff of property without due process of law and deny him the equal protection of the laws contrary to Article XIV in addition to and amendment of the Constitution of the United States of America which provides in part:

'Section 1. "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Although the brief of plaintiff and appellant raised this objection to the proposed construction of the statute urged by defendant and appellee, this matter is not discussed in the court's opinion and apparently was not considered by the court.

3. The opinion of the court does not clearly set forth the reason for its decision and should be clarified.

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4. The construction of the Michigan Statutes by the court is erroneous.

MAURICE SUGAR,
MORTON EDEN, and
BENJAMIN MARCUS,
Attorneys for Plaintiff and Appellant,
3220 Barlum Tower,
Detroit 26, Michigan.

Dated: March 4, 1948."

On April 5, 1948, without opinion, said application was denied.

F

Substantially of Questions Involved

Summary

Several questions closely inter-related are presented to this Honorable Court on this appeal. If the Workmen's Compensation Law does not cover the circumstances and facts presented by a particular injury, and workmen's compensation is not available to the injured individual, does the fact that an employer-employee relationship exists between the injured and the tort feasor preclude the injured from bringing suit in accordance with his common law remedy? It is the plaintiff and appellant's position that any deprivation of a common law right of action for injury to an individual, either to his life, liberty or property, without an adequate substitute provided, is contrary to the Fourteenth Amendment of the United States Constitution. Is a provision in a Workmen's Compensation Law which offers no remedy but takes away all rights to sue under common law from an employee who erroneously files for workmen's compensation valid and constitutional? Can filing a claim under a Workmen's Compensation Act constitute a valid and constitutional election

of remedies, foreclosing all rights under the common law even though the Compensation Act provides no remedy under the circumstances and facts alleged?

It is plaintiff-appellant's position that a clause in a compensation act providing for the waiver of rights under the common law is invalid if it applies to cases over which the compensation act has no jurisdiction. Furthermore, it is the contention of the plaintiff-appellant that the compensation act is only valid in so far as it acts as a substitute for common law remedies, and the filing of a claim by a plaintiff erroneously believing that as a matter of law his injury arose out of and in the course of his employment under the compensation act, cannot constitute an election because no substitute is offered. Otherwise, the act would, in effect, deprive the plaintiff of his common law remedy and leave him remediless. In the instant case, the Supreme Court of the State of Michigan has used the Workmen's Compensation Act to deprive plaintiff of all remedy. This is clearly contrary to the Fourteenth Amendment of the United States Constitution.

It is contended that these questions are substantial in that they affect innumerable individuals working in employments covered by the Workmen's Compensation Acts of the various States. A final decision in this case by the Supreme Court of the United States is essential to determine the rights between the employers and employees in the numerous cases which arise in regard to injuries not covered by the compensation laws.

Propositions, Authorities and Argument

The exact situation presented in the instant case has not yet been decided by the Supreme Court of the United States. However, many similar questions have been considered and the decisions thereon support plaintiff-appellant's conten-

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tion that the decision of the Michigan Supreme Court herein violates the Fourteenth Amendment of the United States Constitution. In the leading case of *New York Central Railroad Co.* v. *White,* 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667, the first compulsory Workmen's Compensation Law considered by the United States Supreme Court was held constitutional. The theory upholding the constitutionality of this Act is discussed thoroughly. The Court, in summary, stated that the fundamental rights and liberties are protected by certain remedies. These remedies, however, are not beyond alteration. Yet, no common law remedy may be set aside without a reasonably just substitute being provided. In that case, the Court held that the reasonably just substitute had been provided under the circumstances presented to it. This proposition is more thoroughly discussed in the leading case of *Truax* v. *Corrigan,* 257 U. S. 312, 42 S. Ct. 124, 66 L. Ed. 254. In that case, the Court held that the due process clause of the Fourteenth Amendment requires that every man should have the protection of his day in court and the benefit of the general law, a law which holds that every citizen is entitled to life, liberty, property, and immunities under the protection of the general rules which govern society. The Court stated that the Constitution was intended to prevent experimentation with the fundamental rights of the individual. It held that no State may deprive an individual of a remedy to protect his basic rights, for the deprivation of such remedy would deprive him of these rights. The rule was stated very clearly in the case of *Terry* v. *Anderson,* 95 U. S. 628, 24 L. Ed. 365, where the Court said:

> "As to the forms of action or modes of remedy it is well settled that the legisature may change them at its discretion provided adequate means of enforcing the right remains."

In the case of *Mountain Timber Co.* v. *State of Washington*, 243 U. S. 219, 37 S. Ct. 260, 61 L. Ed. 685, 13 N. C. C. A. 927, the Court cited *New York Central Railroad Co.* v. *White, supra,* for the proposition that the purpose of the Workmen's Compensation Act is to abolish private rights of action for damages against employers and to *substitute* a system of compensation. The Court said that as long as one remedy is substituted for another, the Act is valid.

In *Cox* v. *U. S. Coal and Coke Co.*, 80 W. Va., 295, 92 S. E. 559, L. R. A. 1918E, 1118, the Compensation Act provided that once it was accepted by the employee, the employer was relieved of liability for any damages at common law for injury or death "however occurring." Nevertheless, the Court said, in regard to defendant's contention that it was not liable under common law for a negligent injury which did not arise out of and in the course of the employment, as follows:

> "The construction of the statute contended for would destroy a long existing common law right without giving anything in return therefor. It would be both unwise in policy as tending to promote carelessness in the employer and repugnant to justice."

In *Gibbs* v. *Zimmerman*, 290 U. S. 326, 54 S. Ct. 140, 78 L. Ed. 342, the Court stated:

> "The appellant has no property in a constitutional sense with any particular form of remedy. All he is guaranteed by the Fourteenth Amendment is the preservation of a substantial right to redress by some effective procedure citing Iowa C. R. Co. *v.* Iowa, 160 U. S. 388, 40 L. Ed. 467, 16 S. Ct. 344; A. Backus, Jr. & Sons *v.* Fort Street Union Depot Co., 169 U. S. 557, 42 L. Ed. 853, 18 S. Ct. 445; Crane *v.* Hahlo, 58 U. S. 142, 66 L. Ed. 514, 42 S. Ct. 214; Hardware Mutual Fire

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Ins. Co. *v.* Good & Co., 284 U. S. 151, 76 L. Ed. 214, 52 S. Ct. 69."

In the case of *Williams* v. *Village of Port Chester,* 76 N. Y. S. 631, the Court discusses the basic principles herein involved, from their original foundation. The Court states that although some state constitutions contain the prohibition that there shall be no wrong without a remedy, they are merely a declaration of the common law and the basic constitutional rights as found in the Magna Carta. The Court cites the case of *Marbury* v. *Madison,* 1 Cranch 163, 2 L. Ed. 60, quoting from Chief Justice Marshall as follows:

"Every injury (must have) its proper redress."

See, also *Twining* v. *New Jersey,* 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 74 L. Ed. 1107, 50 S. Ct. 451; *York* v. *State of Texas,* 137 U. S. 15, 34 L. Ed. 604.

The entire basis of man's civil rights in the instant situation is traced back to the Magna Carta, Pars. 39 and 40. Par. 39 reads:

"No freeman shall be taken or imprisoned, or disseised, or outlawed, or banished, or in any ways destroyed, nor will we pass upon him, nor will be send upon him, unless by the lawful judgment of his peers, or by the *law of the land.*" (Italics ours.)

Par. 40 reads:

"To none will we sell, to none will we deny, or delay, right or justice."

The American Declaration of Independence referred to these principles in declaring that there are certain inalienable rights, among them life, liberty, and the pursuit of

happiness. Several of the early legal commentators have written upon this subject and they are in full accord with plaintiff-appellant's contentions. See *Blackstone's Commentaries*, Vol. 1, pages 123, 124; Vol. 2, pages 1, 2, and 23. See also *Commentaries on American Law* by James Kent and *Constitutional Limitations* by Judge Cooley.

That the State Government cannot deprive a citizen of his common law remedy for injury wrongfully done to him without substituting another in its place, is clearly established. That the Workmen's Compensation Law is valid only so long as it presents a substitute clearly follows. Where the effect of the Compensation Law is to deprive a claimant of all remedy, it is unconstitutional. The unconstitutionality of this Act was pointed out to the Michigan Supreme Court before its decision was rendered and again on the Application for Rehearing.

The problem presented herewith to the Supreme Court of the United States contains a substantial constitutional question. One of the fundamental rights of the Anglo-American Law, known as *ubi jus, ibi remedium*, is at stake. The decision by this Court is highly essential to protect this basic right.

(G)

Cases Believed to Sustain the Jurisdiction

The following decisions of this Court are believed to sustain the jurisdiction of the Supreme Court of the United States on a direct appeal to review the final order and judgment here in question:

Sully v. *American National Bank*, 178 U. S. 289, 44 L. Ed. 1072, 20 Sup. Ct. 935;

Pennsylvania R. R. v. *Hughes*, 191 U. S. 477, 48 L. Ed. 268, 24 Sup. Ct. 132;

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Hamilton v. *Regents of University of California*, 293 U. S. 245, 55 Sup. Ct. 197, 79 L. Ed. 343;

Williams v. *Bruffy*, 96 U. S. 176, 24 L. Ed. 716;

Stevens v. *Griffith*, 111 U. S. 48, 4 Sup. Ct. 283, 28 L. Ed. 348;

St. Louis Southwestern Ry. Co. v. *Arkansas ex rel. Norwood*, 235 U. S. 350, 35 Sup. Ct. 99, 59 L. Ed. 265;

Senior v. *Braden*, 295 U. S. 422, 55 Sup. Ct. 800, 79 L. Ed. 1520;

Sanders v. *Shaw*, 244 U. S. 317, 37 Sup. Ct. 638, 61 L. Ed. 1163;

Chapman v. *Goodnow's Adm'r.*, 123 U. S. 540, 8 Sup. Ct. 211, 31 L. Ed. 235;

Erie P. Co. v. *Purdy*, 185 U. S. 148, 22 Sup. Ct. 605, 46 L. Ed. 847;

Ohio ex rel. Bryant v. *Akron Metropolitan Park District for Summit County*, 281 U. S. 74, 50 Sup. Ct. 228, 74 L. Ed. 710;

Missouri ex rel. Missouri Ins. Co. v. *Gehner*, 281 U. S. 313, 50 Sup. Ct. 326, 74 L. Ed. 870;

Ward v. *Love County*, 253 U. S. 17, 40 Sup. Ct. 419, 64 L. Ed. 751.

(H)

Prayer for Reversal

For which errors, said Robert Morris, plaintiff-appellant and petitioner, prays the allowance of an appeal from the judgment and order of the Supreme Court of the State of Michigan that became final and operative on April 5, 1948 to the Supreme Court of the United States to the end that the record in said motion may be removed into the said Supreme Court of the United States and the errors complained of by your petitioner may be examined and corrected and said

judgment reversed and said action remanded to the State court for trial and that appellant have his costs of this appeal; and your petitioner will ever pray.

ROBERT W. MORRIS,
Petitioner.

By: MORTON A. EDEN,
BENJAMIN MARCUS,
JEROME W. KELMAN,
His Attorneys.

MORTON A. EDEN,
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APPENDIX "A"

Opinion of the Supreme Court of Michigan.

No. 43,750.

Morris *v.* Ford Motor Company

DETHMERS, J.:

While working at his job in the employ of defendant, plaintiff noticed a bloating and sour condition of his stomach and went to defendant's first-aid department where he received some soda and Epsom salts. Shortly thereafter he began to suffer cramps, left his work and went home. Later he underwent an operation, which disclosed a ruptured appendix. He filed a claim for workmen's compensation, alleging that he suffered an injury arising out of and in the course of his employment because of the wrongful administration of salts. The compensation commission of the department of labor and industry, relying on *Stables v. General Motors Corporation*, 315 Mich. 654, found that he had not sustained a personal injury arising out of and in the course of his employment and entered an order denying compensation, from which no appeal was taken.

Thereafter, plaintiff filed suit in the Wayne county circuit court, alleging in his declaration that, under the circumstances, the administration of salts was dangerous, not in accord with sound or common medical practice and a breach of defendant's duty to plaintiff, with resultant injury and damage. Defendant moved to dismiss on the grounds that (1) plaintiff's remedy is exclusively under the workmen's compensation act (see 2 Comp. Laws 1929, §8410, as amended by Act No. 245, Pub. Acts 1943 [Comp. Laws Supp. 1945, §8410, Stat. Ann. 1947 Cum. Supp. §17.144]); (2) plaintiff had elected his forum, thus barring later recourse to courts of law (see 2 Comp. Laws 1929, §8478 [Stat. Ann. §17.212]); (3) plaintiff pursued his remedy under the workmen's compensation act to decision by the compensation commission which is res judicata of de-

fendant's liability to plaintiff. The court dismissed the case on the ground that "if there is any liability, it must be under compensation."

Plaintiff appeals, claiming that the case is not one covered by the workmen's compensation act and that the compensation commission has no jurisdiction over it.

The employer-employee relationship existed between plaintiff and defendant and both were subject to the workmen's compensation act. Plaintiff's claim for compensation alleged an injury arising out of and in the course of his employment. Under the statutes above noted exclusive jurisdiction over the issue thus presented is conferred upon the compensation commission and plaintiff's filing of such claim constituted a release of all claims at law arising from the injury. Whether's plaintiff's injury and resultant disability were compensable under the act or not, his claim therefor was within the jurisdiction of the compensation commission, and, having proceeded before it under the act, he may not thereafter maintain an action at law. *Sotonyi v. Detroit City Gas Co.*, 251 Mich. 393; *Dailey v. River Raisin Paper Co.*, 269 Mich. 443; *Twork v. Munising Paper Co.*, 275 Mich. 174; *Curley v. Beryllium Corp.*, 278 Mich. 23; *Cell v. Yale & Towne Manfg. Co.*, 281 Mich. 564.

Plaintiff relies on *Grand Rapids Trust Co. v. Petersen Beverage Co.*, 219 Mich. 208, and *Hansen v. Pere Marquette R. Co.*, 267 Mich. 224. The *Petersen Case* is distinguishable in that there the plaintiff was a minor, unlawfully employed, this Court holding that, for that reason, he did not come within the workmen's compensation act, as then in effect, and any proceeding taken thereunder was a nullity and no defense to a subsequent action at law. In the *Hansen Case* the plaintiff had instituted suit in the Federal court and that court held he could not recover under the Federal employers' liability act because his employer was not engaged in interstate commerce. The subject matter having been one, as it developed, over which the Federal courts had no jurisdiction, we held that the proceedings there constituted no bar to prosecution of a claim before the department of labor and industry. Such is not the situation in the instant case.

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Plaintiff proceeded before the compensation commission on the theory that his injury arose out of and in the course of his employment, but, now, in an action at law, proceeds on the theory that it did not so arise. Having adopted one theory before the compensation commission, he may not thereafter bring other proceedings based upon an inconsistent, opposite theory or claim. *Mintz v. Jacob,* 163 Mich. 280; *Donovan* v. *Curts,* 245 Mich. 348; *Mertz v. Mertz,* 311 Mich. 46.

Plaintiff contends that because defendant took no cross appeal he may urge and this Court may consider no reasons or grounds in support of the order of the trial court rejected or not adopted by it. In this plaintiff is in error. See *Township of Pontiac v. Featherstone,* 319 Mich. 382, and cases cited therein.

The order dismissing the case is affirmed, with costs to defendant.

Bushnell, C. J., and Sharpe, Boyles, Reid, North, Butzel, and Carr, JJ., concurred.